

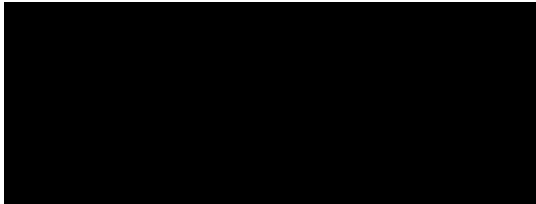
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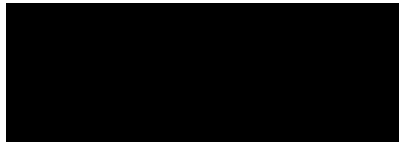


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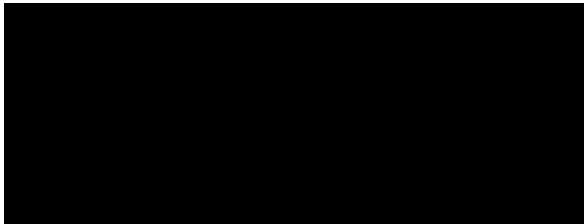
FILE: EAC 02 034 55028 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The director's decision shall be withdrawn and the matter remanded to the director to determine whether the beneficiary is qualified to perform the proffered position.

The petitioner provides custom designed wedding services. It seeks to employ the beneficiary as a market research analyst. The director denied the petition on the basis that the proffered position is not a specialty occupation.

On motion to reconsider, counsel submits the following documents:

- 1) an AAO decision which approves an H-1B petition for a market research analyst;
- 2) information from the Small Business Administration (SBA) website;
- 3) income tax documents;
- 4) a letter from the petitioner which explains the proposed position's duties
- 5) checking account statements; and
- 6) information about the petitioning entity;

Counsel states that the petitioning entity is not a market research analyst, and therefore, "cannot answer your concerns about the job duties as well as the actual [m]arket [r]esearch [a]nalyst can answer you." Counsel states that the AAO denied the instant petition on the ground that the petitioner's job description is ambiguous and fails to describe in detail the beneficiary's tasks and procedures. In refuting this, counsel references a prior AAO decision regarding a market research analyst, and points out that the petitioner, a newly formed import/export company, had briefly described the position's duties, yet the AAO approved the petition. Counsel asserts that the submitted evidence shows that the petitioner intends to expand its products and services and improve marketing efforts. The SBA document, counsel maintains, demonstrates the importance of market research, even for small businesses.

The AAO grants the motion to reconsider.

Counsel asserts that the AAO has already determined that the proffered position is a specialty occupation since the AAO has approved another, similar petition in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the decision submitted by counsel is not sufficient to enable the AAO to determine whether approval of that H-1B petition would support approval of this petition. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

To determine whether baccalaureate-level education in a specialty occupation is required to perform the proposed position, its duties need to be sufficiently detailed. The AAO correctly denied the instant petition

on the ground that the proposed position is generalized and ambiguous. The petitioner fails to explain research methodology and analysis, and describe in some fashion how primary information will be collected, even though these are key areas of market research. On appeal, the petitioner submits a December 11, 2003 letter that explains in more detail the proposed position. This letter states that the beneficiary will personally contact national competitors to determine the market prices for products and services offered by the petitioner; contact foreign competitors to determine what products and services are customary and sought after; formulate a website design that allows the petitioner to indirectly survey each customer; contact potential customers by mailed survey, questionnaire, or telephone.

The petitioner's December 11, 2003 letter sufficiently elaborates on the proposed position's duties for the AAO to conclude that the proposed position is similar to a market research analyst, as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). With regard to the educational requirements of a market research analyst, the *Handbook* states:

A master's degree is the minimum requirement for many private sector market and survey research jobs, and for advancement to more responsible positions. Market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline. . . .

. . .

Bachelor's degree holders who majored in marketing and related fields may qualify for many entry-level positions that might or might not be related to market and survey research. These positions include research assistant, administrative or management trainee, marketing interviewer, and salesperson, among others.

There is insufficient evidence in the record for the AAO to determine whether the beneficiary is qualified to perform the proposed position.

The director's decision shall therefore be withdrawn and this matter remanded to the director who shall determine whether the beneficiary is qualified to perform the duties of the proffered position and the nature of the relationship between the petitioner and the beneficiary. The director must afford the petitioner reasonable time to provide evidence pertinent to these issues, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requires for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's July 3, 2002 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.